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October 4, 2013

VIA ECF AND FEDERAL EXPRESS

Honorable Michael A. Shipp, U.S.D.J.
United States District Court
District of New Jersey
Clarkson S. Fisher Building and U.S. Courthouse
402 East State Street, Room 7W
Trenton, New Jersey 08608

Re: *In re New Jersey Tax Sales Certificates Antitrust Litig.*
Master Docket No.: 3:12-CV-01893-MAS-TJB

Dear Judge Shipp:

Pursuant to the Court's Text Order of September 25, 2013 (Dkt. No. 285), the plaintiffs submit the following joint letter updating the Court on the current status of: 1) the various Motions to Dismiss that have been filed; and 2) the joint defense group.

I. PROCEDURAL HISTORY AND CURRENT STATUS OF MOTIONS TO DISMISS

a. The Filing of the Consolidated Master Class Action Complaint

Pursuant to a November 15, 2012 Consent Order (Dkt. No. 112), Plaintiffs filed a Consolidated Master Class Action Complaint (the "Complaint") on December 21, 2012 against defendants for their alleged participation in a conspiracy to rig bids for tax sales certificates throughout the State of New Jersey from at least 1998 through February 2009. The defendants included:

- The Farber/Butler Defendants (CCTS, LLC; CCTS Tax Liens I, LLC; CCTS Tax Liens II, LLC; DSBD, LLC; Pro Capital LLC; David Butler; and David M. Farber);
- The Mercer Defendants (Burlington Assembly of God/Fountain of Life Center; Mercer S.M.E., Inc.; Susan M. Esposito; and David B. Boudwin);
- The Sass Defendants (M.D. Sass Investors Services, Inc.; M.D. Sass Tax Lien Management, LLC; M.D. Sass Municipal Finance Partners - I, L.P.; M.D. Sass Municipal Finance Partners - II, L.P.; M.D. Sass Municipal Finance Partners - III, LLC; M.D. Sass Municipal Finance Partners - IV, LLC; M.D. Sass Municipal Finance Partners - V, LLC; M.D. Sass Municipal Finance Partners - VI, LLC; Vinaya J. Jessani; and Stephen E. Hruby);



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- The Crusader Defendants (Royal Bancshares of Pennsylvania, Inc.; Royal Bank America; Crusader Servicing Corporation; and Royal Tax Lien Services, LLC);
- American Tax Funding, LLC;
- The Crestar Defendants (CCTS Capital LLC; Crestar Capital, LLC);
- Plymouth Park Tax Services, LLC;
- The BankAtlantic Defendants (BB&T Corporation; BBX Capital Corporation f/k/a BankAtlantic Bancorp, Inc.; Fidelity Tax, LLC; Michael Deluca; Gary I. Branse);
- The Wolfson Defendants (Richard Simon Trustee; Betty Simon Trustee, LLC; Joseph Wolfson);
- The Phoenix Funding Defendants (Phoenix Funding, Inc. and Benedict Caiola);
- The Mooring Defendants (Mooring Tax Asset Group, LLC; and MTAG Services, LLC);
- Robert W. Stein;
- Richard J. Pisciotta, Jr.
- William A. Collins;
- Anthony J. De Laurentis;
- Robert Jeffrey;
- Isadore H. May; and
- Robert E. Rothman.¹

b. Settlements Reached To Date

In the nine months since the filing of the Complaint, Plaintiffs and various Defendants have executed eight settlement agreements for a total of approximately \$6 million.

¹ Based on their continuing investigation, Plaintiffs filed a new complaint on September 17, 2013 against defendants William S. Green, Norman T. Remick, Isaac Moradi, Michael Mastellone, Pat Carabellese, PAM Investors, Heartwood 55, LLC, Robert U. Del Vecchio, and Robert U. Del Vecchio Trust. The complaint was filed as related to the consolidated action *In re New Jersey Tax Sales Certificates Antitrust Litig.*, 3:12-01893-MAS-TJB and assigned case number 3:13-5541-MAS-TJB. On September 30, 2013, Plaintiffs requested that this new action be consolidated with the current consolidated action pursuant to the June 11, 2012 Order entered by Judge Wolfson consolidating cases (Dkt. No. 55).



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On August 13, 2013, this Court preliminarily approved six settlement agreements reached with various Defendants. (Dkt. Nos. 276, 277). The settlement agreements totaled \$955,000 and were reached with the following defendants:

1. The Butler/Farber Defendants;
2. The Mercer Defendants;
3. Richard J. Pisciotta, Jr.;
4. William A. Collins;
5. Isadore H. May;
- and
6. Robert E. Rothman.

Plaintiffs have also recently reached settlements with the Crusader Defendants and the Sass Defendants. The settlement agreement with the Crusader Defendants totals \$1.65 million and was filed with this Court on August 30, 2013. *See* Dkt. No. 278. The settlement agreement with the Sass Defendants totals \$3.4 million and was filed with this Court on September 13, 2013. *See* Dkt. No. 281. Plaintiffs anticipate moving for preliminary approval for both of these settlements in the coming weeks.

c. The Motions to Dismiss

Various Defendants filed 10 motions to dismiss the Complaint on March 8, 2013.² Plaintiffs filed Oppositions to the motions on May 15th. *See* Dkt. Nos. 241, 242. Defendants filed Replies on June 26th and July 3rd. *See* Dkt. Nos. 252, 254-5, 257-262, 264-5. The motions were fully briefed as of July 3, 2013.

Given that settlement agreements have been reached with the Crusader Defendants and Sass Defendants, the following Motions to Dismiss are being held in abeyance:

- The participation of the Crusader Defendants and Sass Defendants in the Defendants' Joint Motion to Dismiss (Dkt. No.174);

² Defendants who had already settled prior to March 8, 2013, including the Farber/Butler Defendants, the Mercer Defendants, and Defendants Rothman, Collins, and May, were not required to file motions to dismiss, pursuant to the terms of their settlement agreements. In addition, certain Defendants have filed answers (*see* Dkt. No. 130, 165), and Defendant BB&T Corporation was voluntarily dismissed on February 21, 2013 (*see* Dkt. No. 147).



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- Motion to Dismiss by Vinaya J. Jessani filed March 8, 2013 (Dkt. No. 177);
 - Motion to Dismiss by Sass Defendants filed March 8, 2013 (Dkt. No. 178);
 - Motion to Dismiss by Royal Bancshares of Pennsylvania, Inc.; Royal Bank America; and Royal Tax Lien Services, LLC filed March 8, 2013 (Dkt. No. 185);
- and
- Motion to Dismiss by Crusader Serving Corp. filed March 8, 2013 (Dkt. No. 187).

The Sass and Crusader Defendants will formally withdraw these motions once the Court grants preliminary approval for the Sass and Crusader settlements.

Thus, the motions to dismiss that remain outstanding before this Court are:

- 1) The Omnibus Motion to Dismiss with Non-Settling Defendants (Dkt. No. 174);
 - 2) The Motion to Dismiss by Defendants Benedict Caiola and Phoenix Funding (Dkt. No. 180);
 - 3) The Motion to Dismiss by Defendant MTAG Services LLC (Dkt. No. 182);
 - 4) The Motion to Dismiss by Defendant Mooring Tax Asset Group, LLC (Dkt. No. 186);
 - 5) The Motion to Dismiss by Defendants Gary I. Branse and Michael G. Deluca (Dkt. 188);
- and
- 6) The Motion to Dismiss by Defendants American Tax Funding, LLC; BBX Capital Corporation; Fidelity Tax LLC; and Plymouth Park Tax Services LLC (Dkt. Nos. 173, 193)³.

In addition to these motions, the Crestar Defendants, who initially filed an answer to the Complaint (Dkt. No. 165), subsequently moved for a judgment on the pleadings. (Dkt. No. 279). Plaintiffs opposed the Crestar Defendants' Motion on September 24, 2013. *See* Dkt. No. 284. The motion is currently calendared for October 7, 2013.

³ Plaintiffs and Plymouth Park Tax Services LLC have reached an agreement-in-principle to settle the Action.



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Judge Bongiovanni has stayed all discovery pending resolution of the motions to dismiss, including for Defendants who answered the Complaint. *See* Dkt. No. 204.

II. STATUS OF JOINT DEFENSE GROUP

Certain Defendants (BBX Capital Corporation, Fidelity Tax LLC, American Tax Funding, LLC, Phoenix Funding, Inc., Benedict Caiola, Mooring Tax Asset Group, LLC, and MTAG Services, LLC) who have not reached settlement agreements with Plaintiffs have retained their status as a Joint Defense Group. These Defendants will pursue the applicable Motions to Dismiss as described above.

Respectfully Submitted,

/s/ Bruce D. Greenberg